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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 545

SEABOARD AIR LINE RAILROAD COMPANY,
Petitioner,

vs.

DAVID HINTON, *et als.*,
Respondents.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND SUPPORTING BRIEF.

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(1)

Summary Statement of the Matter Involved.

This petition brings before the Court a situation where three declaratory judgment class actions based upon *Steele* v. *L. & N. R. Co.* and *Tunstall* v. *Brotherhood,* 323 U. S. 192 and 210 (of the so-called spurious type permitted under Rule 23 of the Federal Rules of Civil Procedure) have been brought in two different United States District Courts, on behalf of the same class but with different members of the class used as the nominal plaintiff or plaintiffs in each action, although the same attorneys acted for the class in the first and third of those actions. The petition seeks review of a judgment of the Court of Appeals for the

Fourth Circuit entered November 8, 1948 reversing an order of the District Court for the Eastern District of Virginia.

The class on whose behalf those actions were brought (in so far as involved in this action) was the class of Negro locomotive firemen employed by petitioner, Seaboard Air Line Railroad Company. The petitioner is hereinafter referred to as "Seaboard".

The first of those class actions was brought on February 12, 1947, in the District Court of the United States for the Eastern District of Virginia (hereinafter called the "Virginia Court"). The second and third were brought, respectively, on October 27, 1947, and on February 17, 1948, in the District Court of the United States for the District of Columbia (hereinafter called the "District of Columbia Court").

The second action was stayed by the District of Columbia Court because of the pendency of this action (as to Seaboard and another defendant). A motion to stay the third action, as to the same defendants and made upon the same grounds, was denied by the District of Columbia Court, and an injunction *pendente lite* issued against all of the defendants. Thereafter the Virginia Court issued its order dated June 8, 1948, enjoining the class and its attorneys from prosecuting the third action in the District of Columbia Court, and directing them, with the approval of the District of Columbia Court, to cause the third action to be dismissed as to Seaboard and one other defendant. The fact that the third such action could not be dismissed without the approval of the District of Columbia Court* points up the delicate situation which is involved and the unseemly conflict among Federal District Courts which could result, and emphasizes, we submit, the importance of a review by

* Although not a part of the record in this case, we believe that this Court should be informed that that consent was given.

this Court of the decision in this action of the Court of Appeals for the Fourth Circuit.

The Court of Appeals for the Fourth Circuit with an opinion dated November 8, 1948 (Appendix A hereto), reversed the Virginia Court's order of June 8, 1948, and held that this action was not an action *in rem*, or *quasi in rem*, and that the ability of the Virginia Court properly to adjudicate the questions before it would not in any way be interfered with by the continued prosecution of the third action in the District of Columbia Court. That opinion is reported as *Hinton* v. *Seaboard Air Line R. Co.*, 170 F. 2d 892. The Court of Appeals further found that no action by the District of Columbia Court would interfere with the exercise of jurisdiction by the Virginia Court, and that the primary relief which the District of Columbia Court was asked to grant in the third action was substantially different from the primary relief sought in the Virginia Court.

We submit that the Court of Appeals did not take into consideration or give effect to the necessary differences between a declaratory judgment spurious class action of the character here involved and litigation between individual parties as such, that serious problems in the administration of justice by the District Courts are involved, that as hereafter pointed out there is a conflict between the Courts of Appeal for the Third and Fourth Circuits with respect to the questions presented, and that the decision of the Fourth Circuit Court of Appeals in this case should be reviewed by this Court by certiorari in order to settle the status of such cases and the administrative questions involved, as well as the grave question with respect to the protection by one federal court of its previously acquired jurisdiction against misuse by the persons in interest (whether or not with the highest motives) of the declara-

tory judgment class action procedure through similar and subsequent proceedings in other federal courts.

The questions involved cannot be properly presented or considered without an accurate detail of the proceedings and the parties in the three actions involved. This action is known for convenience as the *Hinton* action. The second action is called the *Graham* action, and the third action is called the *Palmer* action.

The Hinton Action.

David Hinton, a Negro locomotive fireman employed by Seaboard brought a class action naming as defendants (1) the Seaboard, (2) the Brotherhood of Locomotive Firemen and Enginemen as the representative under the Railway Labor Act of all of the firemen, both white and Negro, employed by Seaboard (hereinafter called the "Seaboard Brotherhood") and (3) certain local lodges of the Seaboard Brotherhood. That action was brought on February 12, 1947, in the District Court of the United States for the Eastern District of Virginia (hereinafter called the "Virginia Court") and is pending therein.

The gravaman of the *Hinton* complaint was the alleged improper representation by the Seaboard Brotherhood of the Negro locomotive firemen employed by the Seaboard and in particular, the alleged discriminatory provisions as to the Negro firemen of the agreements covering the rates of pay, rules and working conditions for all firemen, which were embodied in the agreements between the Seaboard and the Seaboard Brotherhood. The *Hinton* complaint also alleged on information and belief that the Seaboard Brotherhood had put other and further discriminatory proposals to the Seaboard and it prayed, among other things, discovery as to all propositions, pending or negotiated, and

all actions taken by it as the representative of the entire class or craft (R., p. 10). A temporary injunction enjoining certain alleged discriminatory provisions of the existing agreement was entered by the Virginia Court on December 30, 1947, from which no appeal was taken and which is being fully observed by the defendants.

The Graham Action.

Four other members of the class of Negro locomotive firemen employed by Seaboard, subsequently were joined as plaintiffs in a second class action which was brought in the District of Columbia Court on October 27, 1947, long after the commencement of the *Hinton* action. Those four were Leroy Graham, Joseph Munlin, Ed Sullivan and Sam Hogan. Its further prosecution as to the Seaboard and the Seaboard Brotherhood was stayed by the District of Columbia Court, although that action proceeded as to the other defendants.

The *Graham* action was a mechanical expansion of the *Hinton* action, in that three separate class actions were combined in one pleading. As to the Seaboard Negro firemen the defendants were the Seaboard and the Seaboard Brotherhood, and certain local lodges of the Brotherhood (as local lodges of the Brotherhood proper, rather than as local lodges of the Seaboard Brotherhood, as none of the members of the local lodges named as defendants in the *Graham* action were employed by the Seaboard, or for that matter by the other railroads which were also named as defendants in that action).

There were also joined as plaintiffs in the *Graham* action sixteen Negro firemen employed by the Atlantic Coast Line Railroad Company (hereinafter called the Coast Line) as the representatives of the class of Negro firemen employed by the Coast Line, and as to the plaintiff class of Coast Line

Negro firemen the defendants were the Coast Line, the Brotherhood of Locomotive Firemen and Enginemen as the representative under the Railway Labor Act of all of the firemen, both white and Negro, employed by the Coast Line (hereinafter called the Coast Line Brotherhood), and certain local lodges of the Brotherhood (*qua* the Brotherhood).

There was also joined as a plaintiff in that action one Negro fireman employed by a subsidiary of the Southern Railway Company (hereinafter called the Southern) as the representative of the class of Negro firemen employed by the Southern and its subsidiaries. As to the plaintiff class of Southern Negro firemen the defendants were the Southern, the Brotherhood of Locomotive Firemen and Enginemen as the representative under the Railway Labor Act of all of the firemen, both white and Negro, employed by the Southern (hereinafter called the Southern Brotherhood), and certain local lodges of the Brotherhood (*qua* the Brotherhood).

As above stated, on motion of the Seaboard the *Graham* action was stayed as against the Seaboard and the Seaboard Brotherhood because of the pendency of the *Hinton* action. Upon motion on behalf of the Coast Line Negro firemen and the Southern Negro firemen, however, an injunction was issued against the Coast Line, the Coast Line Brotherhood, the Southern and the Southern Brotherhood, restraining the enforcement of the discriminatory provisions of the separate agreements covering the rates of pay, rules and working conditions of all firemen on those railroads.

An appeal was taken from that injunction order and the United States Court of Appeals for the District of Columbia Circuit, with an opinion dated September 20, 1948, reversed the injunction order and held that the complaint in the *Graham* action should have been dismissed for lack

of proper venue. A petition for certiorari was filed in this Court but has not yet been acted upon.

The Palmer Action.

This Court on December 15, 1947 denied certiorari in the last appeal in the *Tunstall* case, 163 F. 2d 289. The following month the General Chairman of the Brotherhood on the Southeastern railroads met in Chicago. As a result of that meeting separate but identical notices (except as to addressee and signature) dated January 26, 1948, were served by the several Brotherhoods as the several representatives of the firemen upon each of the Southeastern railroads with whom such representatives had agreements. The notice of January 26, 1948, was a proposal, signed in each case by the General Chairman of the firemen employed by each railroad in the southeast, and was made in accordance with the provisions of the Railway Labor Act, for changes in those several agreements to remove all discriminatory provisions and to place the Negro firemen on a basis of full and complete equality with the white firemen.

The notice is reproduced at p. xvii of Appendix "B" to this petition and supporting brief. It proposed complete removal of promotional inequalities as between white and negro firemen and required all firemen to take examinations for promotion to engineer in the order of seniority, failing in which any fireman would be dropped from the service of the railroad. Whether the proposal is fair and proper as to the negro firemen remains to be determined by the proper court. In any event, if it is a cause for grievance on the part of the Seaboard negro firemen, it is clearly within the *lis pendens* of the *Hinton* action and properly determinable by the Virginia Court in that action. In fact, as it would affect the employment status of plaintiff class in the *Hinton*

case, that class was entitled to be heard, in that action, with respect thereto and, by virtue of the provisions of Rule 23 of the Federal Rules of Civil Procedure, the question was not only properly determinable by the Virginia Court but that Court, once the *Hinton* action had been brought, was under the duty to pass upon all questions affecting the employment status of that class.

Consideration of such a proposal by the Brotherhood was apparently known to Hinton's attorneys in January, 1948. (See their correspondence with the president of the Brotherhood—R., pp. 39-42.) But neither *Hinton* nor any other Seaboard negro fireman applied to the Virginia Court for any relief in respect of the notice of January 26, 1948. Instead, on February 17, 1948, a new class action was filed in the District Court of the District of Columbia by Hinton's attorneys in the name of *George Palmer,* a negro fireman, resident of Georgia, employed by the Southern, *Adam Wright,* a negro fireman, residing in Florida, employed by the Seaboard (a member of the class in the *Hinton* action and a respondent to this petition for certiorari), and *Eugene Carter,* a negro fireman, resident of Georgia, employed by the Atlantic Coast Line, against the Seaboard, Southern and Coast Line railroads and against the Seaboard Brotherhood, the Coast Line Brotherhood, the Southern Brotherhood and, as in the *Graham* case, certain local lodges of the Brotherhood (*qua* the Brotherhood) none of whose members were employed by the defendant railroads. The pattern of the complaint was precisely that of the *Graham* complaint.

The *Palmer* complaint alleges that the proposal was formulated by the Brotherhood "wilfully and with deliberate intent to harm and prejudice the negro locomotive firemen", (R., pp. 58-59), and that the proposal "could

not help but drastically affect the employment status of all negro locomotive firemen", although it does not specify how these proposals, if accepted by the railroads, would produce that result.

(4)

Although more elaborate and not in the exact verbiage, the complaint in the *Palmer* action (R., pp. 47-63) states no different basic facts or cause of action from those alleged in the complaint in the *Hinton* action. The only new matter, which is clearly supplemental only, and only another detail of the same grievance, concerns the notice of January 26, 1948.

(5)

Notwithstanding that the *Hinton* complaint comprehends all the essentials of the *Palmer* complaint and that the supplemental matter of the January 26th notice could have, and should have, been brought into the *Hinton* action by amendment or supplemental pleading, the *Hinton* action was ignored, left with the injunction *pendente lite* still in effect, and the *Palmer* action brought. Although the District of Columbia Court had previously granted a stay on the motion of the Seaboard in the *Graham* action because of the pendency of the *Hinton* action, at the same time granting an injunction against the Brotherhood and the other defendants, the same court denied a similar motion of the Seaboard in the *Palmer* action, as well as Seaboard's motion to dismiss, and on April 13, 1948, granted an injunction *pendente lite* against the Brotherhood and the three defendant railroads "from entering into any agreement embodying the text or substance" of the proposals contained in the notice of January 26, 1948 (R., p. 82).

At the hearing before the Virginia Court which resulted in the Order of June 8, 1948 which was reversed by the Court of Appeals for the Fourth Circuit, counsel for the Seaboard and the Seaboard Brotherhood stated for the record that they considered that the outstanding Injunction Order of December 30, 1947 was broad enough to prevent them from negotiating with respect to the notice of January 26, 1948, except with the approval of that Court, and that regardless of the technical scope of the language of that Order they would not, in any event, proceed to negotiate with respect to that proposal without the approval of the Virginia Court. Consequently, the Injunction Order in the *Palmer* case added nothing to the protection in the *Hinton* action presently afforded the plaintiff class of Negro firemen employed by the Seaboard.

The injunction in the *Palmer* action was based on findings of fact and conclusions of law. Finding of Fact No. 2 (R., p. 78) is as follows:

> "(2) This is a class action brought by plaintiffs in their individual capacities and as representatives of all the negro locomotive firemen employed by the defendant railroad companies."

Conclusion of Law No. 2 is as follows:

> "(2) The proposal of January 26, 1948 * * * is violative of the duty owing to the plaintiffs by the defendant Brotherhood as bargaining agent of the entire craft."

The Court's findings and conclusions as a whole (R., pp. 77-81) assign no reason for ignoring the Virginia Court and interfering with its prior jurisdiction. Nor did the Court assign any reason for reversing the principle it applied in staying the *Graham* action.

(6)

The effect of the injunction in the *Palmer* case was necessarily to supersede the *Hinton* action for all practical purposes and also deprive the Virginia Court of its right and duty to determine whether the proposal of the Brotherhood of January 26, 1948, was or was not unlawful in its purpose and effect and subject to injunctive relief, although paragraph 16 of the *Hinton* complaint (R., p. 9) refers to other pending proposals by the Brotherhood, and the prayer of that complaint asks for discovery by the Brotherhood "of all propositions made and all actions taken by it" affecting the Seaboard negro firemen, and a permanent injunction against the Brotherhood enjoining it from acting as representative of the negro firemen without giving them notice and opportunity to be heard on "all actions adversely affecting their employment rights proposed or taken".

That the injunctive action of the District of Columbia Court necessarily has this effect, results from the fact that though the Virginia Court has jurisdiction of the declaratory judgment *Hinton* class action, its subject matter and the parties, including, by representation, all the 105 Seaboard negro firemen, the Seaboard and the Brotherhood are in effect enjoined from even negotiating changes in the agreement which the Virginia Court had already enjoined—changes which the Virginia Court might or might not consider proper if given an opportunity to pass upon it if having the right to do so. Whether any court can, in view of the machinery of the Railway Labor Act, enjoin the *negotiation* of this of any other contract, as did the District of Columbia Court, is a question not in issue here, but a more direct and effective interference by one court with the prior jurisdiction of another court can hardly be imagined.

(7)

Accordingly, in order to protect the jurisdiction of the Virginia Court in its right to proceed in an orderly manner to the determination of all questions germane to the *Hinton* action, and to protect itself against a multiplicity of class actions, the Seaboard filed its petition in the Virginia Court in the *Hinton* action (R., pp. 28-47) to acquire *Adam Wright* and his counsel, Messrs. Houston & Waddy, who are counsel in both the *Hinton* action and the *Palmer* action, to dismiss the latter action as to the Seaboard and the Seaboard Brotherhood (but not as to the other defendants) and proceed in the *Hinton* action by supplemental petition or otherwise, as they might be advised.

Following a full hearing, the Virginia Court on June 8, 1948, handed down a memorandum opinion sustaining the petition and awarding the injunction prayed for (R., pp. 83-96). It decided that the issues presented in the *Palmer* action so far as they relate to the Seaboard, its negro firemen and the Brotherhood are fundamentally identical with those in controversy in the *Hinton* action, and that *Adam Wright* or any other Seaboard negro fireman could and should obtain any appropriate relief in that action that he might obtain in the *Palmer* action.

(8)

Upon appeal to the Court of Appeals, by both *Hinton* and *Adam Wright* that Court disagreed and held that *Adam Wright,* although already represented in the *Hinton* action, could continue to prosecute his aspect of the *Palmer* action, and in reaching this conclusion said not only that as a matter of general law the right of a court to enjoin parties before it from instituting other actions relating to the same

subject matter in other courts does not exist but also that the purposes of the two actions are essentially different. In so holding, the Court of Appeals was clearly in error as we shall attempt to show.

(9)

Statement Particularly Disclosing the Basis on Which It Is Contended That This Court Has Jurisdiction to Review the Judgment of the Court of Appeals.

The jurisdiction of this Court exists pursuant to Section 240 of the Judicial Code as amended (28 U. S. C. A., Sec. 340).

(10)

The Questions Presented.

This petition presents only one question: May one Federal court first acquiring jurisdiction of the parties and subject matter in a declaratory judgment class action of the character here involved protect its jurisdiction by enjoining one or more of the members of the class from prosecuting another action or other actions in other Federal courts when the *lis pendens* of the first action fully comprehends the subject matter of the latter action or actions?

(11)

Reasons for Allowance of the Writ.

(1) The previous summary statement shows the basic reasons for allowance of the writ. More particularly the Court of Appeals misinterpreted the scope and character of the *Hinton* action and held that the *Palmer* action relates to a different subject matter, when in fact that subject matter is comprehended by the *Hinton* action. The effect of the

decision is to permit one Federal court to invade the prior jurisdiction of another Federal court, in a declaratory judgment class action, take the litigation out of the hands of the first court and abolish any restriction of a multiplicity of actions for the same cause.

(2) The decision of the Court of Appeals is in direct conflict with decisions of Federal Courts of Appeals of other circuits. This is a proper case for resolving the conflict, particularly since it involves the question of priority of jurisdiction of Federal declaratory judgment class actions and injunctive relief.

(3) The Court of Appeals relied on certain expressions in the opinion in *Kline* v. *Burke Const. Co.*, 260 U. S. 226, 230, as holding that one Federal court has no right to enjoin parties before it from prosecuting actions in another court relating to the same cause unless the action in the first court is one *in rem*. It is submitted that the decision in the *Kline* case was confined to a holding that a Federal court having jurisdiction of an action strictly *in personam* was prevented by the prohibitions of Section 265 of the Judicial Code from enjoining prosecution of a later action in a State court. As we interpret the decisions, this court has *not* held that one Federal court cannot protect its jurisdiction from invasion by another Federal court, but has held that it may. Moreover, the Court of Appeals ignored the radical changes in Section 265 made effective September 1, 1948, (and before the appeal in the case at bar was argued) by the Act of Congress of June 25, 1948, Chap. 646, Public Law 773, 62 Stat. . Section 265 is now Section 2283 of New Title 28 of the Judicial Code, and provides as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State court

> except as expressly authorized by Act of Congress, *or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments*". (Italics supplied.)

This section is now implemented with new Section 1651 of Title 28 which provides:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions agreeable to the usages and principles of law."

The revision makes clear the right in the Virginia Court denied by the Court of Appeals to protect its jurisdiction.

As we have already pointed out, the *Palmer* action is in reality three class actions in one complaint, and an examination of that complaint shows that *Adam Wright* sues only on behalf of Seaboard negro firemen and purports to represent only them as a class. The Court of Appeals mistakenly assumed that the notice of January 26, 1948, was one notice addressed to all railroads jointly and to be negotiated jointly, although in fact each railroad received a separate notice as the usual preliminary to separate collective bargaining with that railroad. No railroad can be forced, without its consent, to negotiate jointly or regionally. The fact that the notices were similar in tenor makes no difference. The Court of Appeals concedes that *Adam Wright* and other Seaboard negro firemen

> "might have sought by amended and supplemental bill here the relief which they asked in the Palmer case, they were under no obligation to do so, *since there was no splitting of a cause of action* but the asking of relief with respect to matters entirely separate and distinct."

The italicized words ignore paragraph 16 of the *Hinton* complaint, and the prayer of that complaint that the Seaboard and the Brotherhood be enjoined from *any* negotiations or contracts which involve unfair or hostile action by the Brotherhood as bargaining agent or discrimination against the minority negro firemen.

Previously the opinion had stated:

> "This suit is not an action *in rem* or *quasi in rem* where the court's control over property subject to its jurisdiction might be interfered with by proceedings in another tribunal, nor is it one wherein its ability to properly adjudicate the questions before it could be in any way interfered with by proceedings in the Palmer suit. Even if the suits were between the same parties and involved application for the same relief, therefore, no ground for granting injunctive relief would be presented." (Italics supplied.)

Petitioner asserts that this statement is wrong in two respects. *First,* the injunction issued by the District of Columbia Court does interfere with the proceedings in the *Hinton* action in that the Seaboard and the Brotherhood are explicitly enjoined from entering into and *a priori* from negotiating a contract which the Virginia Court might consider germane to the subject matter of the *Hinton lis pendens* and might, or might not, decide was not discriminatory. *Second,* petitioner asserts that it is not the law that one Federal court may not enjoin parties members of a class before it from proceeding in another Federal court where the parties, subject matter and the relief sought are essentially the same in both actions, especially where, as here, the first action is a declaratory judgment class action.

The Court of Appeals was further in error in stating in its opinion that

> "Orderly procedure would require that this decision [of the District of Columbia Court denying the motion to dismiss and enjoining Seaboard and the Brotherhood], if erroneous, be reversed by appeal and not by injunction from a court of coordinate jurisdiction which has no *res* within its control requiring protection."

This ignores the fact that the Virginia Court only took its action to protect *its* jurisdiction which had already been invaded by the injunction of the District of Columbia Court. The petitioner submits that it is the action of that Court, not that of the Virginia Court, which is a proper subject of criticism.

(12)

Attached to this petition is a supporting brief. That brief discusses more elaborately the pertinent authorities, the legal conclusions of the Court of Appeals, and the conflict between its decision and those in other circuits. We merely submit here that despite the conclusion of the Court of Appeals to the contrary, the right of the Virginia Court to protect its jurisdiction under the circumstances hereinbefore described is supported by the following decisions: *Steelman* v. *All-Continent Corporation,* 301 U. S. 278; *Looney* v. *Eastern Texas Railroad Co.,* 247 U. S. 214; *Crosley Corporation* v. *Hazeltine Corporation,* 122 F. 2d, 412 (C. C. A. 3); *Crosley Corporation* v. *Westinghouse Electric & Mfg. Co.,* 130 F. 2d, 474 (C. C. A. 3); *Triangle Conduit & Cable Co.* v. *National Electric Products Corp.,* 125 F. 2d, 1008 (C. C. A. 3) (Cert. den. 316 U. S. 676).

As illustrative of the attitude of the Court of Appeals in this case, we refer to the attempt in its opinion to distinguish *Crosley Corporation* v. *Hazeltine Corporation, supra.* It said, in referring to the fact that the court in

that case which had first acquired jurisdiction of a declaratory judgment suit, was justified in enjoining suits in other jurisdictions by the defendant:

> "These were enjoined on the ground that they would interfere with the court's exercise of jurisdiction *in the declaratory judgment suit which could quite properly have been regarded as a suit quasi in rem.*"

Thus, the Court of Appeals obviously overlooked the fact that the *Hinton* action is a declaratory judgment action in which the complaint explicitly prays:

> "1. A declaratory judgment stating the rights and correlative duties of the parties in, to and by reason of the matters hereinbefore set forth."

Having conceded, though unknowingly, that the declaratory judgment feature makes *Crosley Corporation* v. *Hazeltine* authority for the action of the Virginia Court in issuing its injunctive order, and having decided the case directly contrary to the principle of that decision, the conflict between the Fourth Circuit and the Third and other circuits, and the failure of the Fourth Circuit to follow the principle expressed as follows by this Court in *Steelman* v. *All-Continent Corporation, supra,* fully justifies the granting of the writ of certiorari hereby applied for.

> "The power to issue an injunction when necessary to prevent the defeat *or impairment* of its jurisdiction is inherent in a court of bankruptcy, *as it is in a duly established court of equity.*" (Italics supplied.)

That the foregoing statement in the *Steelman* case did not refer to protection of any *res* in the possession of the

court that issued the injunction appears from the following further quotation from that opinion:

> "The trustee does not challenge the jurisdiction of the Federal Court in Pennsylvania, if the word 'jurisdiction' be taken in its strict and proper sense. He is not seeking a writ of prohibition directed to the court itself. He is not seeking an injunction to vindicate his exclusive contract over a *res* in his possession, or in the possession actual or constructive of the court that appointed him • • • *What he seeks* is an injunction directed to a suitor, and not to any court, upon the ground that the suitor is misusing a jurisdiction which by hypothesis exists and converting it by such misuse into an instrument of wrong."

Pursuant to Rule 38(1), this petition is accompanied by a certified transcript of the record in the case, including the proceedings in the Court of Appeals for the Fourth Circuit to which the writ is asked to be directed.

Respectfully submitted,

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Attorneys for Petitioner.

BRIEF IN SUPPORT OF THE FOREGOING PETITION.

It is respectfully submitted that the petition presents important reasons for granting certiorari. Although forgetful, in its own decision, that the several litigations here involved are class actions and the *Hinton* action also one for declaratory judgment and therefore something more than ordinary *in personam* cases, the Court of Appeals correctly recognized in its opinion that a declaratory judgment action such as that of *Hinton* is in the nature of a suit *quasi in rem*. It deals with important relationships, rights and interests in the employment status. In effect, both the *Hinton* and *Palmer*, not to mention the *Graham*, actions are to enforce proper performance by a fiduciary, the Brotherhood, of its duties as bargaining representative of the negro firemen. Status is equally as important at times as tangible property over which a court first acquiring jurisdiction is entitled to exclusive control.

The decision of the Court of Appeals not only invites one court to invade another's jurisdiction, but also invites decisions, possibly conflicting, from two or more courts relative to rights of members of the same class, thus putting both the members of the class and the defendants in a state of complete uncertainty as to where they may stand if the Virginia Court and the District of Columbia Court or some other Federal Court reach opposing conclusions.

At the outset, we wish to affirm that in seeking the injunctive order reversed by the Court of Appeals, petitioner Seaboard had no purpose to obstruct the negro firemen in the assertion and determination of their rights to fair representation and treatment in the bargaining process and in their employment relations with the Seaboard.

Many of the negro firemen have been in the employ of the Seaboard for long periods of years as faithful and satisfactory workers, and Seaboard repudiates any implication that it is a party to any purpose to separate these men from its employment.

Paragraphs 9 and 10 of the complaint in the *Hinton* action (R., p. 6) disclose that the Seaboard first refused, and only later reluctantly agreed to, the contract of February 18, 1941, which the Virginia Court enjoined by its order of December 30, 1947. There is no charge in the *Palmer* complaint, nor otherwise anything in the record to imply, that the Seaboard was prepared to accept the proposal of the Brotherhood of January 26, 1948. But by reason of the Railway Labor Act, Seaboard, until stopped by the action of the District of Columbia Court, was under a positive mandate to negotiate with the Brotherhood concerning that proposal.

We are afraid that the Court of Appeals derived a contrary impression and, because of that, like the District of Columbia Court, in its proper desire to see that the negro firemen receive adequate protection, overlooked the serious consequences of a decision which permits one Federal court, not only by injunction *pendente lite* to deny recourse to the bargaining process under the Railway Labor Act but also to override the prior acquired jurisdiction of another court. That the Virginia Court has been alert to protect the rights of the negro firemen and to observe the admonitions of this Court in the *Steele* and *Tunstall* decisions, is apparent from its injunction *pendente lite* of December 30, 1947, in the *Hinton* and its accompanying findings and conclusions (R., pp. 17-27). There is nothing in the record to justify, nor is there otherwise even the faintest implication, that if the Seaboard negro firemen

had applied to the Virginia Court by amendment of the *Hinton* Complaint, or by supplemental petition attacking the proposal of January 26, 1948, instead of joining in the *Palmer* action, the Court would not have given their contentions full and fair consideration. Whether a court has the power to enjoin the *making* of a contract containing the proposals of January 26, 1948, is not now involved, but compare *General Committee* v. *Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, and *National Federation of Railway Workers* v. *National Mediation Board*, 110 F. 2d 529, cert. den., 310 U. S. 628.

Seaboard has the right to negotiate its own agreements with the Brotherhood on its own property, subject of course to review by the proper court should any such agreement violate the principle of non-discrimination applied in the *Steele* and *Tunstall* decisions. The injunctive order of the District of Columbia Court yields to the suggestion of the plaintiffs in the *Palmer* action that the Court must control and direct the bargaining process by blanketing the three defendant railroads, Seaboard, Southern and Atlantic Coast Line. Such a theory ignores the fact that the proposals contained in the notice of January 26th were made separately to each of many of the southern railroads other than Seaboard, Southern and Atlantic Coast Line. (*Palmer* complaint paragraph 26, R., p. 56). Thus, the *Palmer* action does not include as defendants similarly situated the great railway systems operating in the Southern States of the Louisville & Nashville, Illinois Central, and St. Louis-San Francisco railroads or the considerable, though smaller, systems such as Central of Georgia, Nashville, Chattanooga & St. Louis, Gulf, Mobile & Northern, and others. Accordingly, the District of Columbia Court at most could control the bargaining process on only three

railroads out of many. The numerical difference between that control and the jurisdiction of the Virginia Court in the *Hinton* action is an insignificant matter of degree.

As a result, the Seaboard is now confronted with the two actions of *Hinton* and *Palmer,* and if the District of Columbia Court and the Court of Appeals are right, it can be subjected to other conflicting class actions by as many of the 105 Seaboard negro firemen, including the *Palmer* action plaintiffs, as they may wish to bring in any one or more of the numerous Federal courts in the six Southern States in which Seaboard operates. Similarly, as to the Southern and Atlantic Coast Line Railroads.

It should be pointed out that the fact that *Adam Wright* is not by name a party plaintiff to the *Hinton* action is not material, since he is equally a party by representation as though actually named. It is the subject matter of the two suits, not strict identity of the parties, that is important. *Landis* v. *North American Co.,* 299 U. S. 248, 254.

The Court of Appeals in its opinion asserts (Appendix, p. ~~184~~) "that the two suits are not between the same parties and do not involve the same relief"; that "the purpose of the case at bar is primarily to enjoin enforcement of provisions of contracts already agreed upon between the Seaboard and the Brotherhood", whereas "the purpose of the *Palmer* suit is to enjoin the Brotherhood to act as bargaining representative of the firemen so long as it denies them any voice in the matter of bargaining or the selection of bargaining representatives", and that after the Virginia Court had issued its injunction of December 30, 1947, against the existing contracts between the Brotherhood and Seaboard "these rights had already been settled and nothing further was required in that regard".

In thus restricting the scope of the *Hinton* complaint, the Court of Appeals completely overlooked the fact that paragraph 16 of the complaint refers to other pending proposals; that paragraph 2 of the prayer for relief of that complaint asks for discovery of all "propositions made and agreements pending", and that paragraph 4 of the prayer seeks a permanent injunction against the Brotherhood

> "enjoining them from acting or purporting to act as representative * * * so long as it or them refuse to represent plaintiff and the other negro locomotive firemen fairly and in good faith, and to give them notice, opportunity to be heard, and report on all actions adversely affecting their employment rights proposed or taken by it or them."

And that paragraph 1 of the prayer seeks "a declaratory judgment stating the rights and correlative duties of the parties in, to and by reason of the matters hereinbefore set forth."

The essential purpose of the injunctive order of the Virginia Court is perfectly expressed in the following quotation from the opinion in *Steelman* v. *All-Continent Corporation,* 301 U. S. 278, 290-291:

> "The trustee does not challenge the jurisdiction of the Federal Court in Pennsylvania, if the word 'jurisdiction' be taken in its strict and proper sense. He is not seeking a writ of prohibition directed to the court itself. He is not seeking an injunction to vindicate his exclusive contract over a *res* in his possession, or in the possession actual or constructive of the court that appointed him * * * *What he seeks* in an injunction directed to a suitor, and not to any court, upon the ground that the suitor is misusing a jurisdiction which by hypothesis exists and

converting it by such misuse into an instrument of wrong."

And analysis of what the Court decided in the *Steelman* case, which was not directly concerned with any distinction between *in rem* and *in personam* jurisdiction shows it to be clear authority for the action of the Virginia Court.

The Court of Appeals construed *Kline* v. *Burke Const. Co.*, 260 U. S. 226, 230, as holding that the Virginia Court did not have the power to protect its jurisdiction from invasion by the District of Columbia Court. This interpretation was erroneous for the two reasons:

(1) The decision in the *Kline* case turned solely on the question of the power of a Federal court to enjoin proceedings in a State court where only *in personam* actions were involved and the Federal Court had no jurisdiction *in rem* or *quasi in rem*. The Court held that Section 265 of the Judicial Code (28 U. S. C. A., Sec. 379) prohibited injunctive action by the Federal Court in a non *rem* action against a State court action. Although certain expressions from the opinion in the *Kline* case relied on by the Court of Appeals when isolated from their context give color to the position taken by the Court of Appeals, it is submitted that neither this Court nor the Circuit Courts of Appeals other than in the Fourth Circuit have held that either the *Kline* decision or any other decision of this Court prevents one Federal Court from protecting its jurisdiction against infringement by another Federal Court. That this is so, we shall seek to demonstrate by a review of the decisions.

(2) The Court of Appeals overlooked the fact that whatever justification it might have found in the opinion in the *Kline* decision based upon Sec. 265 of the Judicial

Code which prohibited injunctions by Federal courts to stay proceedings in State courts or in other general language of that opinion had been completely obliterated by the change in Section 265 effected by the revisions of the Judicial Code that became law on September 1, 1948, pursuant to the Act of Congress of June 25, 1948, Chap. 646, Public Law 773, 62 Stat., adopting various revisions of the Judicial Code. That these changes were clearly intended to authorize any Federal court to do exactly what the Virginia Court did, appears to be clear beyond question.

Section 265 as now changed is Section 2283 of the new title 28, and is as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, *or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments*". (Italics supplied.)

This section is now implemented with new section 1651 of Title 28, which provides:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions agreeable to the usages and principles of law."

The revisers' notes state the following explanations and reasons for the changes:

> "An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.
>
> "The phrase 'in aid of its jurisdiction' was added to conform to section 1651 of this title and to

make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

"The exceptions specifically include the words 'to protect or effectuate its judgments,' for lack of which the Supreme Court held that the Federal Courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See Toucey *v.* New York Life Insurance Co., 62 S. Ct. 139, 314 U. S. 118, 86 L. Ed. 100. A vigorous dissenting opinion (62 S. Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change).

"Therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision."

The language from the opinion in the *Kline* case quoted by the Court of Appeals in its opinion (Appendix, p. 184) is as follows:

> "But a controversy is not a thing, and a controversy over a mere question of personal liability does not involve the possession or control of a thing, and an action brought to enforce such a liability does not tend to impair or defeat the jurisdiction of the court in which a prior action for the same cause is pending. Each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court. Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of *res adjudicata* by the court in which the action is still pending in the orderly exercise of its jurisdiction, as it would determine any other question of fact or law arising

> in the progress of the case. The rule, therefore, has become generally established that where the action first brought is *in personam* and seeks only a personal judgment, another action for the same cause in another jurisdiction is not precluded."

The Court of Appeals failed to quote the following statement of general principle also found in that opinion:

> "It is settled that where a Federal court has first acquired jurisdiction of the subject matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent jurisdiction where the effect of the action would be to defeat or impair the jurisdiction of the Federal court."

The Court in the *Kline* opinion then proceeded to qualify this general rule in so far as concerns injunctive action by a Federal court against a State court proceeding by confining the injunctive power to cases where the Federal court had a jurisdiction *in rem.*

The significance of the deliberate intent of Congress to nullify the results of the decision in *Toucey* v. *New York Life Insurance Co.,* referred to in the revisers' notes is highly pertinent here because the *Toucey* case involved the question of the right of a Federal court to protect its own judgment against invasion or relitigation. Otherwise stated, the question in the *Toucey* case was as to the right of the Federal Court to protect its jurisdiction against an *in personam* action in a State court, although the previous judgment of the Federal Court was rendered also in an *in personam* action in which no *res* was involved.

The Court of Appeals also attempted to distinguish the decision of the Circuit Court of Appeals for the Third Circuit in *Crosley Corp.* v. *Hazeltine Corp.,* 122 F. 2d, 925 (C. C. A. 3) on the ground that the suit there was

one for a declaratory judgment "which could quite properly be regarded as a suit *quasi in rem*", completely overlooking, as we have alread pointed out, the fact that the *Hinton* action is both one for a declaratory judgment and also a class action.

Thus the decision of the Court of Appeals is in direct conflict with the principle announced, not only in the *Hazeltine* case, but consistently followed in the Third Circuit in other decisions (see *Triangle Conduit & Cable Co.* v. *National Electric Products Corp.*, 125 F. 2d, 1008), as well as in conflict with decisions in other circuits which have followed, or adopted the principle of, *Crosley Corp.* v. *Hazeltine Corp.*

In the *Hazeltine* case the Court specifically considered and rejected the contention that *Kline* v. *Burke Const. Co.* prevented the Delaware District Court which had first obtained jurisdiction of a declaratory judgment action instituted to determine questions of patent rights, from enjoining the defendant *Hazeltine Corporation* from prosecuting infringement suits in a Federal court of Ohio. The Circuit Court of Appeals in the *Hazeltine* case distinguishes *Kline* v. *Burke Const. Co.* by showing that the reasons underlying that decision do not apply to a conflict between two Federal courts. We quote from the opinion of Judge Maris:

> "The cases to which we have referred clearly have no application to a situation in which two actions are pending in courts of equal dignity within the judicial system of a single sovereignty. An interesting discussion of a similar situation arising in the judicial system of one of the states will be found in Trees *v.* Glenn, 319 Pa. 487, 181 A. 579, 102 A. L. R. 304. In that case the Supreme Court of Pennsylvania held that a court of common pleas

of one county of the state, sitting as a court of equity, had the power to enjoin the parties before it from prosecuting a suit in equity in the court of common pleas of another county of the same state. We conclude that the court below had the power to enjoin the parties within its jurisdiction from bringing other suits upon the same cause of action in another federal district court.

"We accordingly reach the question whether under the circumstances of this case the court abused its discretion in refusing to grant the injunction. We think it did. It was long ago laid down by Chief Justice Marshall as a salutary rule that 'In all cases of concurrent jurisdiction, the court which first has possession of the subject must decide it'. Smith *v.* McIver, 9 Wheat. 532,535, 22 U.S. 532,535 6 L. Ed. 152. It is of obvious importance to all the litigants to have a single determination of their controversy, rather than several decisions which if they conflict may require separate appeals to different circuit courts of appeals. No party has a vested right to have his cause tried by one judge rather than by another of equal jurisdiction. Certainly, the defendant cannot be heard to complain that the suit has been brought in the district of its domicile rather than in the district where the plaintiff is located. The party who first brings a controversy into a court of competent jurisdiction for adjudication should, so far as our dual system permits, be free from the vexation of subsequent litigation over the same subject matter. The economic waste involved in duplicating litigation is obvious. Equally important is its adverse effect upon the prompt and efficient administration of justice. In view of the constant increase in judicial business in the federal courts and the continual necessity of adding to the number of judges, at the expense of the taxpayers, public policy requires us to seek actively to avoid the waste of

> judicial time and energy. Courts already heavily burdened with litigation with which they must of necessity deal should therefore not be called upon to duplicate each other's work in cases involving the same issues and the same parties."

Following this language, the opinion further lays stress on the fact that the reasons for permitting the injunction applied "with especial force to patent suits, such as the one before us, brought under the declaratory judgment act to enable an alleged infringer to avoid a multiplicity of suits by the patent owner".

There is nothing said in this opinion, although it deals with patent litigation, which does not apply with equal force to the problem of multiplicity of actions concerning the asserted rights of the negro firemen which they seek to protect against infringement.

Nor did the Court of Appeals in reversing the Virginia Court even follow its own earlier decision in *Berliner Gramaphone Co.*, v. *Seaman*, 113 Fed. 750 (C. C. A. 4), in which it sustained an injunction by a Federal court already having jurisdiction of the parties and the subject matter in an equity suit, not *in rem*, against prosecution by the defendant of a law action in a Federal court in New York.

The Court said:

> "The third assignment of error goes to the injunction restraining the defendant from proceeding in its action at law in the Second circuit. The court below had taken jurisdiction of all matters in controversy between the complainant and defendant, and was proceeding to adjust the equities between them. It claimed to have entire jurisdiction over the whole controversy, and to afford relief. After this decision was made, and whilst it was still operative,

> the defendant went into a court of law, and, upon the same facts and circumstances set out in pleadings in the cause in the court below, sought relief in this law court. The complainant was thus compelled not only to go into another jurisdiction to try points at issue below, but also to go into the jurisdiction of a law court in which he could not avail himself of his equities. Under these circumstances the court below enjoined him. It is a familiar principle that when a court of equity has taken jurisdiction of a controversy and has all the parties before it, it proceeds to give full relief, and it can enjoin any proceedings in any other court touching the matters in controversy before it."

The rule stated in *Crosley Corp.* v. *Hazeltine Corp.* was expressly approved by the Circuit Court of Appeals for the Second Circuit in *Cresta Blanca Wine Co.* v. *Eastern Wine Corp.*, 143 F. 2d, 1012 (C. C. A. 2d) where after citing among other cases *Berliner Gramaphone Co.* v. *Seaman, supra,* and *Landis* v. *North American Co.*, 299 U. S. 248, the Court said:

> "It is a sensible doctrine in accord with equitable principles and conducive to justice between the parties and to economy of judicial time and energy."

In *Milwaukee Gas Specialty Co.* v. *Mercoid Corp.*, 104 F. 2d, 589, the Circuit Court of Appeals for the Seventh Circuit held that the Court first acquiring jurisdiction of a declaratory judgment action is entitled to maintain it until its duty is fully performed and the jurisdiction involved is exhausted.

Crosley Corp. v. *Hazeltine Corp.* has also been approved in the First Circuit in *Dwinnell-Wright Co.* v. *National Fruit Product Co.*, 129 F. 2d, 848 (C. C. A. 1), where in approving an injunction *pendente lite* issued on motion

of the plaintiff in trademark litigation against proceedings in the patent office by the defendant, the Court said:

> "The district court in its memorandum of decision gave its reasons for granting the plaintiff's motion to restrain the defendant from prosecuting its proceeding for cancellation in the Patent Office as follows [42 F. Supp. 1016, 1017]:
>
> " 'It has long been settled that a court of equity which has first taken jurisdiction of a case may, in order to prevent vexatious and harassing litigation, enjoin the parties from further proceeding in another forum. While the jurisdiction of federal courts to interfere with state court proceedings is sharply limited by statute, there is no reason why this principle should not apply between two federal courts, or between a federal court and an administrative tribunal of the United States. Time, expense, and inconvenience may be saved both to litigants and tribunals if the court which first takes jurisdiction of an issue between two parties exercise its power to prevent multiplicity of actions and duplication of effort. It was said in *Gage* v. *Riverside Trust Co., Ltd., et al., C. C.*, 86 F. 984, 985, 999, 'The proposition that the court which first acquires jurisdiction of a cause and of the parties thereto will hold and maintain it, in order to settle and end the controversy, does not admit of question'.
>
> "Undoubtedly, the rule relied upon by the court below, in spite of its limitation with respect to proceedings in the courts of a State by Sec. 265 of the Judicial Code, 28 U. S. C. A. Sec. 379, is applicable when two actions are pending in courts of equal dignity within the judicial system of a single sovereignty. Georgia Power Co. *v.* Tennessee Valley Authority, 5 Cir., 89 F. 2d 218, 221, and cases cited. It has been applied in patent cases. Crosley Corp *v.* Hazeltine Corp., 3 Cir. 122 F. 2d 925; Milwaukee

> Gas Specialty Co. *v.* Mercoid Corp., 7 Cir., 104 F. 2d, 589, 592."

Although not involving a direct clash of jurisdictions, the Circuit Court of Appeals for the Sixth Circuit in *Western Supplies Co.* v. *Freeman,* 109 F. 2d, 693, held that where a party could apply for supplemental relief in a cause pending in another Federal court to which it was already a party in a declaratory judgment action, such party should not be permitted to bring another action in a Federal court of Ohio, saying:

> "We are of the opinion that a suit may not be maintained under the declaratory judgment act when another suit between the same parties, involving the same subject matter, is pending in another court of competent jurisdiction and the parties are thereby enabled to procure a full and immediate adjudication of their rights."

The opinion cites the decision from the Fourth Circuit in *Aetna Casualty & Surety Co.* v. *Quarles,* 92 F. 2d, 321, to the effect that a second suit should not be permitted

> "if the result would be merely to anticipate the trial of an issue involved in a pending case or to determine the validity of a defense which could be tried equally well therein or to try a controversy piecemeal without complete decision of the matters in dispute."

Although the Court of Appeals sought also in its opinion to distinguish *In re Georgia Power Co.,* 89 F. 2d, 218 (C. C. A. 5), that decision clearly demonstrates that the principle of the decision in *Crosley Corp.* v. *Hazeltine Corp.* is also the law in the Fifth Circuit, and that the attempted distinction is ineffectual, as the following brief statement of the facts will show.

Georgia Power Company sued in a State court of Georgia to enjoin the Tennessee Valley Authority from building a competing line. The suit was removed to the Federal Court for the Northern District of Georgia. The Power Company and others then sued TVA in a State court in Tennessee and prayed for the same relief as in the *Georgia* suit. That case was also removed to the Federal Court for the Eastern District of Tennessee which then granted an injunction *pendente lite* in favor of the Power Company against TVA. Then in the suit in the Federal Court in Georgia, TVA moved for an interlocutory injunction against the enforcement by Georgia Power Company of the injunction in the *Tennessee* suit. Before that motion was heard, Georgia Power Company moved to dismiss the *Georgia* suit, but its motion was denied and the Georgia Court then entered an injunction *pendente lite* against enforcement of the Tennessee injunction. The Power Company then appealed to the Circuit Court of Appeals for the Fifth Circuit from both orders and also applied to the Appellate Court for mandamus to require the Georgia Court to permit the Power Company to dismiss the *Georgia* suit. The Circuit Court of Appeals did not consider alone the question of dismissal. It considered also the *power* of the Georgia Court to enjoin the *Tennessee* action. No *res* was involved and the suits in the two courts were both strictly *in personam*. In sustaining the power of the Georgia Court to enjoin enforcement of the *Tennessee* injunction, the Circuit of Appeals said:

> "Rarely has a conflict arisen between two federal courts in a civil case. With regard to conflicts between state and federal courts, which occur frequently, the rule is so well settled as to be considered elementary. There is no logical reason why it should differ as to Federal Courts. Compare *In re Johnson*, 167 U. S. 120, 17 S. Ct. 735, 42 L. Ed. 103. In Hark-

rader *v.* Wadley, 172 U. S. 148-163, 19 S. Ct. 119, 125, 32 L. Ed. 399, it was said: 'Two propositions have been so firmly established by frequent decisions of this court as to require only to be stated: First. [This has no application here.] Second. When a state court and a court of the United States may each take jurisdiction of a matter, the tribunal where jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases.'

"We consider the just stated rule applies with equal force in conflicts between federal courts in civil cases where the jurisdiction is concurrent. While the federal courts in Georgia and Tennessee had concurrent jurisdiction over the parties and the subject matter of the suit, it is beyond dispute that the jurisdiction of the federal court in Georgia first attached. We find no abuse of discretion in the refusal of that court to permit plaintiff to dismiss the suit. It necessarily follows that that court, having prior jurisdiction of the cause, as between plaintiff and defendant, was authorized to issue an interlocutory injunction to preserve its jurisdiction. *Ex parte* Young, 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932, 14 Ann. Cas. 764; Rickey Land & Cattle Co. *v.* Miller & Lux, 218 U. S. 258, 31 S. Ct. 11, 54 L. Ed. 1032; Looney *v.* Eastern Texas R. Co., 247 U. S. 214, 38 S. Ct. 460, 62 L. Ed. 1084."

The Georgia Court had no more occasion to protect its jurisdiction than did the Virginia Court, but the only reason the Court of Appeals for the Fourth Circuit could find for holding the *Georgia Power Company* case not an authority for the action of the Virginia Court in issuing its injunction is thus stated (Opinion, Appendix, p. ~~186~~ 66):

"This was a case where injunction to preserve the jurisdiction of the court from being interfered with

was clearly proper. None of these cases presents a situation comparable to the case at bar, where no *res* is involved, no action by the District of Columbia court can interfere with the exercise of jurisdiction by the court below and where the primary relief which the District of Columbia Court is asked to grant is substantially different from the primary relief sought here."

This reasoning simply ignores the declaratory judgment, class action nature of the *Hinton* action, the sweeping nature of the relief prayed, and the earlier statement made in the attempt to distinguish *Crosley Corp.* v. *Hazeltine Corp.* that a class action is in the nature of an action *quasi in rem* which thereby justified the Court in that action in protecting its jurisdiction.

Respectfully submitted,

JAMES B. MCDONOUGH, JR.,
W. R. C. COCKE,
Attorneys for Petitioner.

Appendix "A".

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT.

No. 5798.

DAVID H. HINTON, Plaintiff, and ADAM WRIGHT, CHARLES H. HOUSTON and JOSEPH C. WADDY, Appellants,

versus

SEABOARD AIR LINE RAILROAD COMPANY, a Corporation, Norfolk, Virginia, *et al.*, Appellees.

Appeal from the District Court of the United States for the Eastern District of Virginia, at Norfolk.

(Argued October 11, 1948. Decided November 8, 1948.)

Before PARKER, SOPER and DOBIE, Circuit Judges.

CHARLES H. HOUSTON (JOSEPH C. WADDY and OLIVER W. HILL on brief) for Appellants, and WILLIAM G. MAUPIN and W. R. C. COCKE (HAROLD C. HEISS, RUSSELL B. DAY, RALPH M. HOYT and JAMES B. MCDONOUGH, JR., on brief) for Appellees.

PARKER, Circuit Judge:

This is an appeal in a class suit instituted by colored fireman employed by the Seaboard Air Line Railroad Company to enjoin that company and the Brotherhood of Locomotive Firemen and Enginemen from enforcing against colored firemen in the service of that railroad discrimina-

tory provisions of collective bargaining agreements of February 18, 1941, and May 18, 1942, entered into between the railroad and the brotherhood as bargaining agent of all the firemen employed by it. The first of these agreements was condemned by us as discriminatory in our decision in the case of *Brotherhood of Locomotive Firemen and Enginemen* v. *Tunstall,* 4 Cir. 163 F. 2d 289, and is fully described in our opinion in that case. The second forbade the employment of colored firemen on Diesel locomotives. The suit was instituted February 12, 1947. On December 30, 1947, an injunction *pendente lite* was entered therein restraining the defendants from enforcing against colored firemen employed by the railroad the discriminatory provisions of the two agreements.

Following the denial of certiorari by the Supreme Court in the *Tunstall* case, *supra,* and after entry of the injunction *pendente lite* in the case at bar, the brotherhood as bargaining representative of all firemen on railroads in the southeastern part of the United States, on January 26, 1948, proposed to the Seaboard and other railroads operating in that section changes in the collective bargaining agreement. The colored firemen contend that these changes were directed against them and that the effect of the changes would be to deny them employment on account of race and color. They accordingly caused a class suit, to which we shall refer hereafter as the Palmer suit, to be instituted in the United States District Court for the District of Columbia in behalf of the colored firemen employed by the Seaboard, the Southern and the Atlantic Coast Line Railway Companies, these three being the principal railroads of the southeast, against the three railroads named, the brotherhood and a number of its subordinate lodges. The complaint filed in that suit, while setting forth the right to be properly represented by their bargaining agent, asked by way of relief nothing with respect to the agreements of February 18, 1941, or May 18, 1942, but confined its prayer for relief to asking that the brotherhood and the railroads be enjoined from negotiating with regard to the proposals of January 26, 1948, and that the brotherhood be enjoined

from acting as representative of the colored firemen under the Railway Labor Act so long as it refused them any voice in collective bargaining or in the selection of bargaining agents. On April 29, 1948, an injunction *pendente lite* was entered by Judge Holtzoff in that suit enjoining the defendants therein from entering into an agreement embodying the proposals of January 26, 1948. An appeal from the order granting this interlocutory injunction is now pending in the United States Court of Appeals for the District of Columbia.

The defendant Seaboard Air Line Railway Company, on February 25, 1948, filed a motion with the District of Columbia Court in the Palmer suit to dismiss that action because of the pendency of the present suit, or in the alternative to stay proceedings there until the proceedings here should be determined. That motion was denied on April 13, 1948. The Seaboard thereupon, on April 27, 1948, filed a petition in the court below asking that the plaintiffs and their attorneys be enjoined from prosecuting the Palmer suit in the District of Columbia against the Seaboard and the brotherhood as bargaining agent for its firemen and to dismiss that suit as to such defendants. The District Judge entered an order to that effect and plaintiffs have appealed. The only question presented by the appeal is whether the pendency of this suit is ground for enjoining herein the prosecution of proceedings in the Palmer suit. We think it clear that this question should be answered in the negative.

This suit is not an action *in rem* or *quasi in rem,* where the court's control over property subject to its jurisdiction might be interfered with by proceedings in another tribunal, nor is it one wherein its ability to properly adjudicate the questions before it could be in any way interfered with by proceedings in the Palmer suit. Even if the suits were between the same parties and involved application for the same relief, therefore, no ground for granting injunctive relief would be presented. The case would fall within what Judge Walter H. Sanborn calls the "unquestioned rule that the pendency in a state or other court of an action *in personam* which involves no claim to or lien upon specific

property in the possession or under the dominion of a national court of equity, and no issue of which that court has acquired exclusive jurisdiction, presents no ground for a dependent bill to stay it." *Guardian Trust Co.* v. *Kansas City Sou. Ry. Co.*, 8 Cir. 171 F. 43, 50. As said Judge Jenkins, speaking for the Circuit Court of Appeals of the Seventh Circuit in *B. & O. R. Co.* v. *Wabash R. Co.*, 7 Cir. 119 F. 678, 680: "Where a suit is strictly *in personam*, in which nothing more than a personal judgment is sought, there is no objection to a subsequent action in another jurisdiction, either before or after judgment, although the same issues are to be tried and determined; and this because it neither ousts the jurisdiction of the court in which the first suit was brought, nor does it delay or obstruct the exercise of that jurisdiction, nor lead to a conflict of authority where each court acts in accordance with law." The rule is thus stated with citation of the controlling authorities in *Kline* v. *Burke Construction Co.*, 250 U. S. 226, 230:

> "But a controversy is not a thing, and a controversy over a mere question of personal liability does not involve the possession or control of a thing, and an action brought to enforce such a liability does not tend to impair or defeat the jurisdiction of the court in which a prior action for the same cause is pending. Each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court. Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of *res adjudicata* by the court in which the action is still pending in the orderly exercise of its jurisdiction, as it would determine any other question of fact or law arising in the progress of the case. The rule, therefore, has become generally established that where the action first brought is *in personam* and needs only a personal judgment, another action for the same cause in another jurisdiction is not precluded."

See also *Ins. Co.* v. *Brune's Assignee,* 96 U. S. 588; *Staunton et al.* v. *Ebrey,* 93 U. S. 548; *Purcell* v. *Summers,* 4 Cir., 126 F. 2d 390, 395; *Schwartz* v. *Randolph,* 4 Cir., 72 F. 2d 892, 894; *Merritt* v. *Steel Barge Co.,* 8 Cir., 79 F. 228, 232; *Ambursen Hydraulic Const. Co.* v. *Northern Contracting Co.,* 140 Ga. 1, 78 S. E. 340, 47 L. R. A. (N. C.) 684; 28 Am. Jur. 385.

It is perfectly clear also that the two suits are not between the same parties and do not involve the same relief. While both are class suits, the case at bar is brought only in behalf of the colored firemen employed by the Seaboard, and only against that railroad and the brotherhood as their representative, whereas the *Palmer* case is brought in behalf of all colored firemen employed by the three great southeastern railroad systems, the Seaboard, the Southern and the Coast Line, and is brought against all three of the railroads and the brotherhood as bargaining representative of the firemen employed by all of them. The purpose of the case at bar is primarily to enjoin enforcement of provisions of contracts already agreed upon between the Seaboard and the brotherhood; the purpose of the *Palmer* suit is primarily to enjoin the brotherhood and the three southeastern railroads from negotiating in the future with a view to agreeing upon proposals after this suit was instituted and after an injunction *pendente lite* had been granted and also to enjoin the brotherhood from acting as bargaining representative of the firemen so long as it denies them any voice in the matter of bargaining or the selection of bargaining representatives. The two suits had in common the fact that they were grounded upon the rights declared by the Supreme Court in *Steele* v. *L. & N. R. Co.,* 323 U. S. 192, and by this court in the *Tunstall* case, *supra;* but these rights had already been settled and nothing further was required in that regard. The two suits were to obtain relief from contracts and negotiations that were alleged to deny the rights thus established, and the matters with respect to which relief was asked were substantially different in the two cases. While plaintiffs in this suit might have sought by amended and supplemental bill here the relief

which they asked in the *Palmer* case, they were under no obligation to do so, since there was no splitting of a cause of action but the asking of relief with respect to matters entirely separate and distinct. It was for plaintiffs, not the defendant railroad, to say what relief they would ask with respect to the violations of their rights by the agreements of 1941 and 1942; and there is nothing in law or in common sense which precludes them from seeking in another jurisdiction relief from other violations of their rights. For this reason, as well as for the reason first given, we think there was error in enjoining plaintiffs and their attorneys from prosecuting the *Palmer* suit. In addition to all this, the Seaboard had raised the identical question by motion made in the *Palmer* suit, which was the proper place to raise it, and had received an adverse decision. Orderly procedure would require that this decision, if erroneous, be reversed by appeal and not by injunction from a court of coordinate jurisdiction which has no *res* within its control requiring protection.

None of the cases cited to us supports the granting of the injunction. In *Carbide & Carbon C. Corporation* v. *United States Industrial Chemicals, Inc.*, 4 Cir. 140 F. 2d 47, we held merely that the District Court in Maryland properly exercised its discretion not to entertain a suit to declare a patent valid when it appeared that a prior suit had been instituted between the parties in New York asking that it be declared invalid. *Crosley Corporation* v. *Hazeltine Corporation*, 3 Cir. 122 F. 2d 925, involved a case where a suit for declaratory judgment was instituted against a patentee in the District of his residence to have a patent declared invalid. The patentee countered by instituting nine infringement suits in other jurisdictions. These were enjoined on the ground that they would interfere with the court's exercise of jurisdiction in the declaratory judgment suit, which could quite properly have been regarded as a suit *quasi in rem*. The case of *In re Georgia Power Co.*, 5 Cir. 89 F. 2d 218, involved a suit in a Federal District Court in Georgia in which injunction was sought to restrain the Tennessee Valley Authority from building a power line.

After the denial of a temporary restraining order, following a hearing in which the questions involved in the case were fully decided, plaintiff attempted to dismiss the suit and ask the same relief in another jurisdiction. This was a case where injunction to preserve the jurisdiction of the court from being interfered with was clearly proper. None of these cases presents a situation comparable to the case at bar, where no *res* is involved, no action by the District of Columbia court can interfere with the exercise of jurisdiction by the court below and where the primary relief which the District of Columbia Court is asked to grant is substantially different from the primary relief sought here. *Cf. Purcell* v. *Summers, supra,* 4 Cir. 126 F. 2d 390, 395.

For the reasons stated the order appealed from will be reversed.

Reversed.

Appendix "B".

Comparative Analysis of the Complaints in the Hinton and Palmer Actions.

The *Hinton* action was filed in the District Court at Norfolk on February 12, 1947. Perusal of the complaint proper and the several prayers for relief hereinafter quoted shows that Hinton, on behalf of himself and the entire class of negro locomotive firemen employed by the Seaboard Air Line Railroad, bases the action on essentially the same grounds as those sustained in the *Tunstall* case, 323 U. S. 210, and the *Steele* case, 323 U. S. 192.

The *Hinton* complaint charges that the Brotherhood as bargaining agent for the entire craft and class of locomotive firemen, both white and negro, has used its position to accomplish discrimination against the negro firemen, deprive them of their seniority rights and thereby drive

them from the service of the railroads or relegate them to inferior jobs so that white firemen of junior seniority in service may obtain more desirable positions.

The *Palmer* complaint (R. pp. 47-63) with immaterial variations of language makes the identical charges of hostile animus on the part of the Brotherhood and its design to pursue discriminatory bargaining policies against the negro minority of firemen in an effort to deprive them of their seniority rights and drive them from the service of the railroads. Compare Paragraphs 14-19 of the *Palmer* complaint with Paragraphs 6 and 7 (R. pp. 2-4 of the *Hinton* complaint).

The remaining paragraphs 20-34 of the *Palmer* complaint allege in more detail the mechanics of collective bargaining but allege no new matter occurring since the institution of the *Hinton* action except the Notice of January 26, 1948, showing nothing that could not be brought into the *Hinton* action by supplemental pleading or on motion for further injunction relief.

The *Palmer* action, as pointed out above, is an attempt to combine three separate class actions in one complaint—one by *Adam Wright* as representative of Seaboard negro firemen, one by *Palmer* for Southern Railway negro firemen, and one by *Carter* for Atlantic Coast Line negro firemen. Therefore, the injunctive order of Judge Bryan which is the subject of this appeal, requiring dismissal by *Adam Wright* of his class action does not affect the other two actions of *Palmer* and *Carter*.

As we shall demonstrate, the sweep of the *lis pendens* in the *Hinton* action completely comprehends the questions presented in the *Palmer* action brought in the District Court for the District of Columbia in which *Adam Wright*, a negro locomotive fireman employed by the Seaboard, is co-plaintiff with *Palmer*, a fireman employed by the Southern Railway Company, and *Carter*, a negro fireman employed by the Atlantic Coast Line Railroad Company, co-defendants with the Seaboard in the *Palmer* action.

The Essential Allegations in the Hinton Complaint.

Stated as briefly as possible, the fundamental averments of the *Hinton* complaint are as follows:

Paragraph 6. That the negro locomotive firemen employed on the Seaboard Railroad constitute a minority of the total number of firemen employed, the white firemen constituting the majority, and by virtue of their majority position have chosen the Brotherhood as the representative of the entire craft or class of locomotive firemen employed by the Seaboard, for the purposes of the Railway Labor Act. Neither the plaintiff nor any of said negro firemen has ever chosen the Brotherhood as his representative, but nevertheless, has been forced by reason of his and their minority position to accept the Brotherhood as the representative of the entire class or craft of firemen for the purposes of the Railway Labor Act.

Paragraph 7. The Brotherhood has never given plaintiff nor the other negro locomotive firemen fair, impartial and bona fide representation under the Railway Labor Act as members of the craft or class, but persistently has been hostile, disloyal and unfair, and has deliberately and maliciously used its position as representative to destroy or curtail their employment rights to the selfish advantage of itself, its own members (from whom negroes are excluded) and white locomotive firemen.

Paragraph 10-11. In a deliberate and malicious attempt to drive all negro locomotive firemen (including plaintiff) from their employment, the Brotherhood forced upon the Seaboard and other southern carriers an agreement dated February 18, 1941, negotiated under the auspices of the National Mediation Board acting under the provisions of the Railway Labor Act, an agreement which seriously curtailed the seniority and job rights of the negro locomotive

firemen. With the same purpose (Paragraph 11), the Brotherhood negotiated and concluded with the Seaboard an agreement effective January 1, 1942, the effect of which was to exclude negro firemen from the exercise of their seniority rights as to vacancies on Diesel engine runs, which is preferred service.

Paragraph 16 is of particular significance in relation to the essential relief sought in the *Palmer* action and to the injunctive order and the petition of the Seaboard filed in the *Hinton* action, upon which the order was issued and we, therefore, quote that paragraph in full:

> "16. Plaintiff is informed and believes that the Brotherhood has put other and further propositions to the carrier, beyond those listed here, designed to curtail his employment rights and the employment rights of the other Negro locomotive firemen; and has used its position as representative under the Railway Labor Act to misrepresent him in other respects but in spite of the fiduciary relationship existing between plaintiff and the Brotherhood by virtue of its position as representative of the entire class or craft of locomotive firemen under the Railway Labor Act as aforesaid, the Brotherhood refuses to give plaintiff notice, opportunity to be heard, or a report; and plaintiff is without the means of informing himself so as to protect his rights unless this court orders the Brotherhood to make discovery of said propositions and all action taken by the Brotherhood and the carrier thereunder."

The complaint prays for the following sweeping and comprehensive relief:

> "(1) A declaratory judgment stating the rights and correlative duties of the parties in, to and by reason of the matters hereinbefore set forth.
>
> "(2) Discovery by the Brotherhood of all propositions made and agreements pending or negotiated by it with the carrier, and all actions taken by it as

representative of the entire class or craft of locomotive firemen on the defendant carrier's property, which in any manner curtails the job assignments or seniority or employment rights of plaintiff and the other negro locomotive firemen.

"(3) A permanent injunction against each and all the defendants, and those acting in privy or in concert with them from asserting any claim or otherwise recognizing the binding effect of the Southeastern Carriers Conference Agreement (Exhibit II) or the agreement of May 15, 1942, in so far as said agreement, or either of them, destroys or curtails plaintiff's seniority and employment rights, as a locomotive fireman employed by the defendant Seaboard.

"(4) A permanent injunction against the Brotherhood, its officers, agents, subordinate lodges, their officers or agents, and the Brotherhood members perpetually enjoining them from acting or purporting to act as representative of the entire class or craft of locomotive firemen on the defendant carrier's property so long as it or them refuse to represent plaintiff and the other negro locomotive firemen fairly and in good faith, and to give them notice, opportunity to be heard and report on all actions adversely affecting their employment rights proposed or taken by it or them.

"(5) Compensatory damages against the Brotherhood in the amount of twenty-five thousand dollars, and punitive damages against the Brotherhood in the sum of One Hundred thousand dollars.

"(6) Restoration of his seniority rights, with the prerogative of exercising the same in accordance with the schedule governing rates of pay, rules and working conditions of locomotive firemen on the defendant carrier's property; as said schedule may exist at the time of the exercise of said seniority rights; disregarding the Southeastern Carriers Con-

ference Agreement and the agreement of May 15, 1942, aforesaid, in so far as said agreements restrict or destroy those rights.

"(7) General relief, reasonable attorney fees and costs."

While the injunctive order of December 30, 1947 is confined to prohibition of discrimination in respect of Diesel engine service, it is clear from a reading of the *Hinton* complaint proper and the several prayers for relief previously quoted that the scope of the *Hinton* action is expressly designed to obtain relief against *any* form of discrimination against negro firemen resulting from any agreement then in force or thereafter negotiated between the Brotherhood and the Seaboard. That injunctive order has been fully obeyed by the Seaboard and the Brotherhood, and still remains in full force and effect.

As averred in the Seaboard's petition R., pp. 28-47) joined in by the Brotherhood, upon which Judge Bryan granted the order appealed from of June 8, 1948, and as a comparison with the allegations of the complaint in the *Palmer* action will show, the latter complaint states as a basis for the relief sought by Adam Wright on behalf of Seaboard negro firemen essentially the same facts and the same fundamental reasons for relief that are set out in the *Hinton* complaint. The only differences, wholly immaterial to the application of the principles upon which Judge Bryan's order is grounded, will be stated hereafter.

The Complaint in the *Palmer* Action.

This complaint, which is Exhibit 4 to the petition of the Seaboard in the *Hinton* action on which Judge Bryan's order of June 8, 1948, was granted, is shown at pp. 47-63 of the record.

Paragraph 2. Under the heading of "Summary Statement", it is averred that the plaintiffs sue the Brotherhood as their statutory collective bargaining repre-

sentative under the Railway Labor Act (1) for wilful and malicious misrepresentation of the interests of the plaintiffs as members of the class or craft of locomotive firemen, and (2) to prevent the Brotherhood from representing them under the Railway Labor Act so long as it denies them (a) full participation in the formulation and execution of collective bargaining policies, and (b) full participation in the selection, control over and removal of all Brotherhood officers or agents in so far as they are selected by the Brotherhood to formulate or execute collective bargaining policies for the craft or class of locomotive firemen under the Railway Labor Act.

Paragraphs 1-19 though more elaborate and not in exact verbiage, state no different facts than those alleged in Paragraphs 6 and 7 of the *Hinton* complaint. So far as is material here, the remaining allegations of the *Palmer* complaint, Paragraphs 20-34 deal with the manner in which bargaining agents of the Brotherhood are designated by it and function on the several carriers. The only new matter concerns a notice dated January 26, 1948, given by the Brotherhood to the defendant carriers, i.e., Seaboard, Southern Railway and Atlantic Coast Line, containing certain proposals for revision of existing agreements relating to employment, *seniority* rights, etc. The specific proposal is shown at pp. xviii, Appendix B, and provides in substance that all firemen and helpers (both white and negro) shall be in line for promotion to the position of locomotive engineers but shall be called in seniority order to take examinations for promotion. Those who pass such examinations and meet all other requirements for promotion will be promoted to engineer. Those who decline to take the examinations or fail to qualify for promotion shall be dismissed from the service.

Paragraph 27 of the complaint attacks this proposal as revolutionary and as designed to affect the employment status of all negro locomotive firemen now in service, and complains that the negro firemen were not given an opportunity to participate or be heard in the formulation of said

proposal or in the determination of whatever policy lies behind it.

Paragraph 28 asserts that in failing to give the negro firemen notice or opportunity to be heard and to participate in the formulation of the policy behind the said notice, the Brotherhood as statutory representative of the negro firemen has deprived them of their civil and property rights without due process as guaranteed them under the Fifth Amendment; has denied them the equal protection of the laws guaranteed them by the Civil Rights Act, and has deliberately withheld from them fair and impartial representation under the Railway Labor Act.

Paragraphs 29-34 assert in substance that the officials of the Brotherhood are ill disposed to the negro locomotive firemen who have no voice in the affairs of the Brotherhood; that the Railway Labor Act is unconstitutional in so far as it requires the negro firemen to be represented under the Railway Labor Act by representatives whom they have no voice in selecting or removing, and that they are thereby deprived of their civil and property rights in violation of the Federal Constitution. The prayer of the complaint is as follows:

> "Wherefore Plaintiffs pray:
>
> "1. That the Brotherhood, its officers, agents, servants, employees, subordinate lodges, their officers, agents, servants and employees, and all persons acting for or in conjunction with it and them, and the defendant carriers, their agents, servants, employees and all persons acting for or in conjunction with them, and their subsidiaries, and all persons acting for or in conjunction with them be enjoined, *pendente lite* and permanently, from holding any meetings, conferences, discussions, negotiations or correspondence of or concerning the proposals contained in the Notice of January 26, 1948, aforesaid.

"2. That the Brotherhood, its officers, agents, servants, employees, subordinate lodges, their officers, agents, servants, employees, and all persons acting for or in conjunction with them, be enjoined and restrained, *pendente lite* and permanently, from acting or purporting to act as plaintiff's representative under the Railway Labor Act or the rep-representative of the other Negro locomotive firemen employed by the defendant railroad companies, so long as it or they, or any of them refuse to give them notice of its proposals affecting their interests as members of the craft or class; opportunity to participate in the choice and control of those agents or officers of the Brotherhood who handle collective bargaining and grievance adjustments for the craft or class; opportunity to participate in determining the position of the Brotherhood as representative under the Railway Labor Act on matters concerning rates of pay, rules and working conditions of the craft, and other matters affecting their economic welfare; and full and prompt disclosure of all actions taken by it affecting their interests as members of the craft or class.

"3. Compensatory damages in the amount of $5,000.00 for each of said plaintiffs.

"4. Punitive damages in the amount of $500,-000.00 for each of said plaintiffs.

"5. Such other and further relief as to the Court may seem just and proper, plus costs."

It will be seen from the foregoing comparison of the complaints in the *Hinton* and *Palmer* actions that the fundamental bases of the two actions are the same. Each complaint seeks to prevent discrimination against the negro firemen in bargaining practices, and the *Palmer* action only adds certain new matter occurring subsequently to the institution of the *Hinton* action, coupled with allegations

of violation by the Brotherhood of constitutional rights of the negro firemen and the assertion that the Railway Labor Act is unconstitutional in permitting the majority of the craft or class made up of white firemen to designate the bargaining agents and conduct negotiations on behalf of the entire craft or class.

There is nothing in the findings or conclusions of Judge Holtzoff in his injunctive order in the *Palmer* case showing any essential differentiation from the fundamentals in the *Hinton* action which would not properly be before the court in that action. All that Judge Holtzoff found was that the new proposal of January 26, 1948, had not been submitted to the negro minority, that minority had never been given an opportunity to participate in the election of any brotherhood officer who acted in the formulation of the proposals, and that such proposals are unfair and discriminatory against the negro firemen and if put into effect would threaten their job security and cause them irreparable harm. Judge Holtzoff's conclusions are brief and likewise state nothing that is not fully comprehended by the complaint in the *Hinton* action. We quote the first three of these conclusions as clear proof of this assertion:

> "1. The Brotherhood of Locomotive Firemen and Enginemen as collective bargaining representative under the Railway Labor Act of the entire class of locomotive firemen employed on defendant railroads owes a statutory fiduciary duty to all members of the craft or class to represent them fairly and impartially without hostile discrimination.
>
> "2. The proposal of January 26, 1948, referred to in Finding 8 is violative of the duty owing to the plaintiffs by the defendant Brotherhood as bargaining agent of the entire craft.
>
> "3. Under the Railway Labor Act the defendant carriers are under a duty to negotiate with the Brotherhood as collective bargaining representative

of the craft or class of firemen employed on said carriers concerning the proposals aforesaid and said carriers are proper parties to this proceeding."

"BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

"26 January 1948.

"_____

_____

_____

"Dear Sir:

This is to advise that the employes of the _____ _____ constituting the craft or class represented by the Brotherhood of Locomotive Firemen and Enginemen, approved the following proposal for addition to and or revision of the existing agreement or agreements:

"1. All firemen and helpers now in service or hereafter employed shall be in line for promotion to the position of locomotive engineer. Each fireman and helper shall be called in seniority order and required to take examinations for promotion. Those who pass such examinations and meet all other requirements for promotion will be promoted to engineer. Those who decline to take the examinations or fail to qualify for promotion shall be dismissed from the service.

"2. All firemen and helpers who heretofore failed to pass, declined to take, or were not called for promotional examinations shall, subject to the provisions of Section 1 above, be called for promotion and required to pass the necessary examinations and otherwise qualify for promotion within a reasonable length of time (to be agreed upon) from the effective date of this agreement.

"3. Eliminate all provisions of existing agreements which limit in any manner the exercise of seniority of firemen and helpers, hostlers and hostler helpers.

"4. All provisions of existing agreements not in conflict with or modified by the foregoing shall remain unchanged.

"In accordance with the terms of the existing agreement, and in conformity with the provisions of the Railway Labor Act, as amended, please accept this as the required formal notice of our desire to revise and or eliminate portions of the existing agreement or agreements to the extent indicated.

"The same request, as of this date, is being presented to the managements of practically all railways situated in the Southeastern District.

"It is hereby requested that all lines or divisions of railway controlled by the ..... shall be included in settlement of this proposal and that any agreement reached shall apply alike to all such lines or divisions.

"It is desired that reply to this proposal be made in writing to the undersigned on or before February 5, 1948, concurring therein or fixing date within thirty (30) days from the date of this notice when conference with you may be had for the purpose of discussing the proposal. In event adoption of this proposal is not agreed to in conference, it is suggested that this company join with the managements of other carriers in authorizing a conference committee to represent them in dealing with the subject on a concerted basis.

"Yours very truly,

Chairman."